(2)
Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE:

BALBIR SINGH TULI,

DEBTOR.

BALBIR SINGH TULI,

PETITIONER

VS.

SPRECHER ENERGIE A.G.;

SPRECHER + SCHUH GROUP,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

Balbir Singh Tuli
7373 E. Scottsdale Mall, Suite 1
Scottsdale, Arizona 85251
(480) 949-8000

Pro Se Petitioner
as the representative of his Chapter 11
Bankruptcy Estate retained by his confirmed Plan
of reorganization.

50pp

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NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: BALBIR SINGH TULI Debtor	Nos. 99-16871 99-16910
BALBIR SINGH TULI, Appellant, v. SPRECHER ENERGIE A.G.; SPRECHER + SCHUH GROUP, Appellees.	BAP Nos. AZ-97-01124-PRMe AZ-97-01421-PRMe (Consolidated) AZ-98-1410-PRMe (Related) MEMORANDUM

Appeals from the Ninth Circuit
Bankruptcy Appellate Panel
Perris, Russell, and Meyers, Bankruptcy Judges, Presiding

Submitted June 11, 2001
San Francisco, California

Before: HILL, *** GRABER, and McKEOWN, Circuit Judges

*** The Honorable James C. Hill, Senior Circuit Judge for the Eleventh Circuit, sitting by designation.

Plaintiff Balbir Singh Tuli appeals pro se three orders of the Bankruptcy court, relating to an adversary proceeding that he instituted against two Swiss companies. The Bankruptcy Appellate Panel (BAP) affirmed, as do we.

1. #########

2. #########

3. Defendant's Motion to Amend

In 1998, the bankruptcy court confirmed Plaintiff's plan under Chapter 11. The order preserved all claims that Plaintiff had against Defendants. Defendants moved to amend the order to clarify that, if Plaintiff eventually recovers damages under the Iraqi subcontracts, then Defendants' claims for setoffs against those damages are preserved. The court made that amendment which Plaintiff now disputes.

Specifically, he argues that any setoff was discharged automatically when the plan was confirmed. To the contrary, this court has held that, under 11 U.S.C. § 553(a), pre-petition

rights to a setoff (like those that Defendants asset here) survive the general discharge of debts that occurs, under 11 U.S.C. § 1141, when a plan is confirmed. Carolco Television, Inc. v. Nat'l Broad. Co. (In re De Laurentiis Entm't Group Inc.), 963 F.2d 1269, 1276 (9th Cir. 1992).

Plaintiff argues that Defendants' generally bad conduct during the course of this long-running dispute should create an exception to the rule in § 553(a). That statute contains three exceptions, none of which is implicated here, and none of which supports Plaintiff's theory. Accordingly, the amendment was permissible.

4. ########

AFFIRMED.

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE

PANEL OF THE NINTH CIRCUIT

In re:	)	BAP No.
	)	AZ-98-1410-PRMe
BALBIR SINGH TULI	)	Bk. No.
Debtor.	)	91-10615-PHX-RTB
_____	)	
	)	
BALBIR SINGH TULI	)	
	)	
Appellant,	)	
	)	MEMORANDUM
v.	)	
SPRECHER ENERGIE A.	)	
G., now known as GEC	)	
ALSTOM T&D A.G., and	)	
GEC ALSTOM T&D,	)	
INC.; SPRECHER + SCHUH	)	
LTD.; SPRECHER + SCHUH	)	
HOLDING A.G.;	)	
SPRECHER + SCHUH,	)	
INC.,	)	
Appellees.	)	
_____	)	

Argued and Submitted on May 20, 1999
at Phoenix, Arizona

Filed - June 30, 1999

Appeal from the United States Bankruptcy Court
for the District of Arizona
Honorable Redfield T. Baum, Bankruptcy Judge, Presiding

Debtor Balbir Singh Tuli (debtor) appeals an amended order confirming his chapter 11[1] plan of reorganization. He asserts that the bankruptcy court erred in adding language to the confirmation order that carved out claims by and against appellees GEC Alstom A.G. and GEC Alstom T&D, Inc. (Alstom) and Sprecher + Schuh, Ltd., Sprecher + Schuh Holding A.G. and Sprecher + Schuh, Inc. (Sprecher)[2] from the effect of the plan and from discharge. We AFFIRM.

FACTS

Debtor, who is a contractor, has been engaged for some years in a dispute with appellees with regard to a contract to build power plants in Iraq in the early 1980's. The facts relating to that dispute are more completely set out in our unpublished decision in two consolidated appeals, BAP No.

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[1] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 and to the Federal Rules of Bankruptcy Procedure, Rules 1001-90936

[2] We refer to Alstom and Sprecher collectively as "appellees."

AZ-97-1124 and AZ-97-1421. For purposes of this appeal, it is enough to say that debtor assets that appellees owe him money for work her performed on the construction project, and appellees assert that any amounts they owe debtor are more than set off by amounts they assert debtor owes them. After an involuntary chapter 11 petition was filed against debtor in 1991, debtor commenced an adversary proceeding in an effort to obtain a determination of those disputes. The bankruptcy court stayed the proceeding pending arbitration before the International Chamber of Commerce (ICC), based on an arbitration provision in the contracts. The dispute was never arbitrated, and in 1997, the court dismissed the adversary proceeding for lack of prosecution. Debtor then filed proofs of claim on behalf of Alstom, apparently attempting to get the bankruptcy court to determine the claims in the context of the main bankruptcy case,. despite the court's earlier determination that the claims should be arbitrated. The bankruptcy court allowed Alstom's motion to withdraw those

proofs of claim. Debtor's appeal of the order dismissing the adversary proceeding for lack of prosecution and the order allowing withdrawal of proofs of claim are disposed of in a separate Memorandum decision issued on June 9, 1999.

The court advised debtor that it would not approve any plan of reorganization that deprived appellees of their right to contest whether they owed money to debtor. On June 3, 1998, the court confirmed debtor's chapter 11 plan. Debtor submitted an order for the court's signature that provided that debtor was discharged of all dischargeable debts, and preserved all claims by debtor against appellees. The court entered the order, and Alstom moved to amend the order to also preserve its claims against debtor. The bankruptcy court entered an amended order, which excepted from debtor's discharge any debt owed to appellees and preserved appellees' claims against debtor.

Debtor appeals. He asks that the Panel modify the amended order confirming the plan to delete language that

preserves claims held by appellees against debtor.

ISSUES

1. Whether the appeal is moot.

2. Whether the bankruptcy court abused its discretion in granting Alstom's motion to amend the order confirming the plan to include language carving out the claims by and against appellees from the effect of the plan.[3]

STANDARD OF REVIEW

The Panel reviews a court's ruling on a motion to amend pursuant to Fed. R. Bankr. P. 9023 and Fed. R. Civ. P. 59(e) for abuse of discretion. In re Sandoval, 186 B.R. 470, 493 (9th Cir. BAP 1995).

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[3] The motion to amend was filed by Alstom. The amended order carves out the claims of all appellees, and all appellees argue for affirmance of the order.

1. ########

2. The bankruptcy court did not abuse its discretion in granting Alstom's motion to amend the order confirming the plan.

Debtor argues that the court erred in carving out from discharge and from the effect of the plan any claims appellees have against debtor. Although his argument is not clear, he appears to assert that the court could not except those claims from his discharge without an adversary proceeding[4], and that Alstom has lost its claims to setoff by failing to obtain a determination of those rights and by its inequitable conduct in the bankruptcy case.

Section 1141(d)(1) (A) provides that, except as otherwise provided in the plan or in the order confirming the

---

4. Fed. R. Bankr. P. 7001 provides that a proceeding to determine the dischargeability of a debt must be brought as an adversary proceeding.

plan, confirmation of the plan "discharges the debtor from any debt that arose before the date of such confirmation . . . . . " That provision gives the court authority to approve a plan that carves out specified claims from the general discharge set out in § 1141(d).

The bankruptcy court did not abuse its discretion in carving out any claims to setoff that appellees might have against debtor. Although the language of the amended order confirming the plan is very broad and could be read to preserve claims against debtor personally, we asked counsel at oral argument whether appellees asserted any claims against debtor personally or whether their claims were limited to claims of setoff. Counsel for Alstom said that he could not respond without consulting with his client. After oral argument, we entered an order requiring appellees to advise the Panel whether they would stipulate that the language of the order should be interpreted to preserve only claims to a right

to setoff. Counsel for both appellees have responded with stipulations that the reservations of rights included in the amended order confirming the plan should be interpreted as reserving only their right, if any, to setoff and not as including any right to affirmative relief against debtor. Pursuant to that stipulated interpretation of the amended order, the only claims preserved are claims of setoff.

Section 553(a) provides that, with exceptions not relevant here.

The Ninth Circuit has held that a creditor's rights to setoff survive a § 1141 discharge. In In re De Laurentiis Entertainment Group, Inc., 963 F.2d 1269 (9th Cir. 1992), the debtor filed a plan or reorganization, which was confirmed, under which a new entity, Carolco Television, Inc. (CTI), acquired the rights of the debtor to a claim for $1.25 million against the National Broadcasting Co. (NBC). During the debtor's bankruptcy case, NBC had asserted a right to setoff against that claim for a $1.6 million debt it claimed the debtor

owed to NBC. The plan of reorganization provided that the debtor's right to the $1.25 million claim against NBC was transferred "free and clear" of all prebankruptcy interests not listed in the plan. Although NBC's $1.6 million claim was not listed in the plan, NBC did not object to the plan or contest the order confirming the plan. Id. at 1271.

CTI sued NBC on the prebankruptcy debt, and NBC asserted its claim as a setoff against the debt. CTI objected to the setoff claim, arguing that the debt had been discharged when the plan was confirmed.

The court considered the apparent conflict between § 1141, which provides that property dealt with by the plan is free and clear of all claims and interests of creditors, and that the order confirming the plan discharges the debtor from debts that arose before confirmation, and § 553(a), which "protects the right to a setoff from the operation of the remainder of the bankruptcy code." Id. at 1274. The court concluded:

[S]ection 553 must take precedence over section 1141.

> In reaching this conclusion, we rely not only on . . . persuasive authority, but also on the language and structure of section 553 and the policies which underlie it. Section 553 provides that, with listed exceptions not relevant here, "this title does not affect the right of any creditor to offset a mutual debt. . . ." This language not only establishes a right to setoffs in bankruptcy, subject to enumerated exceptions, but seems intended to control notwithstanding any other provision of the Bankruptcy Code. To give section 1141 precedence would ignore this language.

Id. at 1276. The court also recognized that

> the primacy of setoffs is essential to the equitable treatment of creditors. A setoff is allowed as a defense to a claim brought by the debtor against a creditor. The creditor can claim only an amount large enough to offset its debt; it cannot collect anything from the debtor. Absent a setoff, a creditor . . . is in the worst of both worlds: it must pay its debt to the debtor in full, but is only entitled to receive a tiny fraction of the money the debtor owes it. It was to avoid this unfairness to creditors that setoffs were allowed in bankruptcy in the first place.

Id. at 1277.

Under that holding, § 553(a) automatically preserved any right appellees had to set off their claims against amounts debtor asserts appellees owe him. The court's addition of language providing that debtor's discharge does not cover appellee's claims, and that the claims by and against debtor are

preserved, merely clarified the effect of § 553(a) on the claims of these parties. Adding that language was not an abuse of discretion.

Further, the bankruptcy court in 1994 had ordered that the dispute between debtor and appellees be resolved through arbitration before the ICC. The court made it clear to debtor on numerous occasions that the claims should be resolved in a forum other than the bankruptcy court. The bankruptcy court did not abuse its discretion in using the carve-out language in the amended order confirming the plan to implement its earlier orders requiring that the claims be resolved outside the bankruptcy process. See § 105(a).

Debtor also argues that Alstom lost any right to setoff by failing to obtain a determination of its claims and by what debtor asserts was Alstom's inequitable conduct in the case. Any argument regarding Alstom's loss of setoff rights should be addressed to and resolved by the tribunal that adjudicates the contract dispute between these parties.

CONCLUSION

This appeal is not moot, because it challenges only the language added to the order confirming the plan, and the Panel could fashion effective relief. The bankruptcy court did not abuse its discretion in amending the order confirming the plan to preserve the setoff claims of appellees against debtor. As appellees have stipulated, the amended order does not permit appellees to seek affirmative relief against debtor. We AFFIRM.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
AUG - 9 2001

In re: BALBIR SINGH TULI Debtor	Nos. 99-16871 99-16910
BALBIR SINGH TULI, Appellant, v. SPRECHER ENERGIE A.G.; SPRECHER + SCHUH GROUP, Appellees.	BAP Nos. AZ-97-01124-PRMe AZ-97-01421-PRMe (Consolidated) AZ-98-1410-PRMe (Related) ORDER

Before: HILL*****, GRABER, and McKEOWN, Circuit Judges

The panel has voted to deny the petition for rehearing.

Judges Graber and McKeown have voted to deny the petition

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* The Honorable James C. Hill, Senior Circuit Judge, United States Court of Appeals for the Eleventh Circuit, sitting by designation.

for rehearing en banc, and Judge Hill has so recommended.

The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on it.

The petition for rehearing and petition for rehearing en banc are DENIED.

MANDATE ISSUED Aug. 30, 2001

JUDGMENT

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

In re: BALBIR SINGH TULI

Debtor

Nos. 99-16871
CT/AG#:
AZ-97-01124-PRMe

BALBIR SINGH TULI,

Appellant

v.

SPRECHER ENERGIE A.G.; SPRECHER + SCHUH GROUP,

Appellees.

No. 99-16910
CT/AG#
AZ-97-01424-PRMe

In re: BALBIR SINGH TULI

Debtor

BALBIR SINGH TULI,

Appellant

v.

SPRECHER ENERGIE A.G.; SPRECHER + SCHUH GROUP,

Appellees.

APPEAL FROM the United States Bankruptcy Appellate Panel of the Ninth Circuit.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States Bankruptcy Appellate Panel of the Ninth Circuit and was duly submitted.

ON CONSIDERATION WHEREOF, It is not here ordered and adjudged by this Court, that the judgment of the said Bankruptcy Appellate Panel in this cause be, and hereby is AFFIRMED.

Filed and entered June 15, 2001.

Office of the Clerk
United States Court of Appeals for the
Ninth Circuit
95 Seventh Street, P.O. Box 193939
San Francisco, CA 94119-3939

August 30, 2001

BAP Clerk
Bankruptcy Appellate Panel
125 South Grand Avenue
Pasadena, CA 91105

C.A. No.	Title	Agency/ D.C. No.
99-16871	Tuli v. Sprecher Energie	AZ-97-01124-PRMe
99-16910	Tuli v. Sprecher Energie	AZ-97-01124-PRMe

Dear Clerk:

The following document(s) in the above listed cause(s) is (are) being sent to you under cover of this letter. Counsel are being served with a copy of this letter only.

[X] Certified copy of the Decree of the Court
[ ] Judgment of the National Labor Relations Board
[ ] Certified copy of the Entry of Dismissal

The record on appeal will follow under separate cover.

Please acknowledge receipt on the enclosed copy of this letter.

Very truly yours,
Cathy A Catterson
Clerk of Court

By: Juanja V. Ross
Deputy Clerk

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE

PANEL OF THE NINTH CIRCUIT

In re:	)	BAP No.
	)	AZ-98-1410-PRMe
BALBIR SINGH TULI	)	Bk. No.
Debtor.	)	91-10615-PHX-RTB
_____	)	
	)	
BALBIR SINGH TULI	)	
	)	
Appellant,	)	
	)	MEMORANDUM
v.	)	
SPRECHER ENERGIE A.	)	
G., now known as GEC	)	
ALSTOM T&D A.G., and	)	
GEC ALSTOM T&D,	)	
INC.; SPRECHER + SCHUH	)	
LTD.; SPRECHER + SCHUH	)	
HOLDING A.G.;	)	
SPRECHER + SCHUH,	)	
INC.,	)	
Appellees.	)	
_____	)	

Argued and Submitted on May 20, 1999
at Phoenix, Arizona

Filed - June 9, 1999

Appeal from the United States Bankruptcy Court
for the District of Arizona
Honorable Redfield T. Baum, Bankruptcy Judge, Presiding

Debtor appeals an order dismissing an adversary proceeding he filed in his bankruptcy case (AZ-97-1124) and an order allowing withdrawal of proofs of claim debtor filed on behalf of appellees Sprecher + Schuh Holding A.G., Sprecher + Schuh, Ltd. and Sprecher + Schuh, Inc. (Sprecher Group) and GEC Alstom T&D, A.G. and GEC Alstom, Inc. (Alstom)[1] (AZ-97-1421). Both orders relate to a dispute regarding a 1982 contract for the construction of a power plant in Iraq. The result of the court's orders was to require that any adjudication of that dispute take place in arbitration or in a court other than the bankruptcy court. The two appeals have been consolidated.[2] We AFFIRM on both appeals.

---

1 All appellees will be referred to collectively as "appellees."

2 Debtor has filed a related appeal of an amended order confirming debtor's chapter 11 plan. (AZ-98-1410) A separate decision will issue in the appeal.

FACTS[3]

Debtor is a contractor. In 1982, he was the managing director of an Indian corporation that he owned, Consort Constructions Ltd. Alstom, a Swiss corporation, entered into a contract with the State Organization of Electricity of the Republic of Iraq to build power plants in Iraq.[4] Alstom then entered into two subcontracts with Consort for performance of the civil work on the projects. The subcontracts provided

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3 Some of the undisputed background facts are taken from the parties' briefs and other pleadings and are not necessarily supported by evidence in the record

4. The contract was with Sprecher Energie, the predecessor to Alstom. For ease of reference, we will refer to the company throughout as Alstom. It is not clear from the record who the Sprecher Group appellees are. According to Defendants' Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss, etc., pp. 2-3, the Sprecher Group defendants are either companies that were predecessors to Alstom, are entities unrelated to Alstom, or are no longer in existence. Because all Sprecher appellees have asserted the same arguments, we will refer to them together.

that all disputes arising out of the contracts would be arbitrated by an arbitrator of the International Chamber of Commerce. (ICC)[5].

Work commenced on the projects in 1982. In December 1982, Alstom ordered Consort off the job because of alleged defects in performance. In a letter dated February 27, 1984, Alstom set out its understanding of the sums that were due to Consort for Consort's work and also the sums it asserted Consort owed it for alleged breaches of contract. (Ex. 4 to debtor's First Amended Disclosure Statement). Alstom claimed contract damages that exceeded the amount Alstom indicated it owed to Consort.

At some point, Consort assigned its claims against Alstom to debtor. Despite debtor's demand, Alstom has not

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5 The contracts provide:

All disputes arising in connection with the present contract shall be finally settled and the rules of conciliation and arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The contract shall be governed by Swiss law. (Complaint, Ex. 2 ¶ 14)

paid the amounts set out in the 1984 letter, because it asserts that any amounts it owes Consort are more than offset by amounts it alleges Consort owes for Consort's breach of contract.

An involuntary bankruptcy petition was filed against debtor in 1991. The court entered an order for relief in November 1991. In December 1992, Consort and debtor, as assignee of the claims of Consort, commenced an arbitration proceeding against Alstom before the ICC. (Debtor's July 1, 1993 Affidavit in Response to Motions to Dismiss, p. 7) Later in the same month debtor commenced adversary proceeding No. 92-1330 in bankruptcy court against Alstom and the Sprecher Group, seeking turnover of the amounts set out in Alstom's 1984 letter, pursuant to § 542,[6] as well as additional amounts as damages for alleged breach of the subcontracts.

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6 Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330 and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036.

He claims turnover for amounts he asserts are undisputed, and which he claims exceed the amount of any setoff Alstom might have.

In 1994, on appellees' request, the bankruptcy court stayed the adversary proceeding pending arbitration. Shortly thereafter, the ICC dismissed the arbitration proceeding based at least in part on debtor's failure to pay the necessary fees.

In August 1996, after there had been no action in the adversary proceeding for more than 18 months, the bankruptcy court entered an order to show cause why the adversary proceeding should not be dismissed for lack of prosecution. On November 5, the court held a hearing on the order to show cause. It deferred ruling, allowing debtor to file supplemental pleadings. In mid-December, he filed two proofs of claim in the bankruptcy case on behalf of Alstom, asserting claims for setoff against the amounts debtor asserts Alstom owes him for the work Consort did on the Iraqi projects. In February 1997, the court dismissed the adversary proceeding without

prejudice. It also granted Alstom's motion to withdraw the proofs of claim that debtor had filed on Alstom's behalf and denied debtor's motion to reconsider that ruling.

Debtor appeals.

UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

In re:	)	Case No. 91-10615-PHX-RTB
BALBIR SINGH TULI	)	
Debtor.	)	**AMENDED ORDER CONFIRMING PLAN**

The plan ("Debtor's Third Alternative, Modification of His First Amended Plan of Reorganization Dated 2/10/97, Consolidated 5/15/97, Submitted 7/7/97 After Incorporating Settlements Since Made Effected and Corrected, Reconsolidated 7/8/97 Without Materially and Adversely Affecting Any Class Already Voted") under Chapter 11 of the Bankruptcy Code filed on or about June 15, 1995, modified and/or amended December 5, 1996, December 31, 1996, February 10, 1997, May 15, 1997, July 7, 1997 and July 8, 1997, having been transmitted to creditors, and it having been

determined after hearing on notice that the requirements for confirmation set forth in 11 U.S.C. 1129(b) have been satisfied;

IT IS ORDERED THAT:

The Plan filed by the Debtor is confirmed.

Except as set forth below, the above-named Debtor is released from all dischargeable debts.

Any judgment heretofore obtained in any court other than this Court is null and void as a determination of personal liability of the Debtor with respect to any of the following:

Debts dischargeable under 11 U.S.C. 532(a);

Unless heretofore or hereafter determined by order of this Court to be nondischargeable, debts alleged to be excepted from discharge under 11 U.S.C. 523(a)(2), (4) and (6);

Debts determined by this Court to be discharged.

All creditors whose debts are discharged by this Order and all creditors whose judgments are declared null and void

above are enjoined from instituting or continuing any action or employing any process or engaging in any act to collect such debts as personal liabilities of the above-named Debtor.

IT IS FURTHER ORDERED THAT:

Any and all claims, rights, privileges and remedies held by the Debtor against GEC Alstom T&D A.G. and GEC Alstom T&D, Inc. (f/k/a/ Sprecher Energie A.G.), Sprecher + Schuh, Ltd., (collectively, "GEC Alstom") and any and all claims, rights, privileges and remedies held by GEC Alstom against the Debtor shall in no way be altered, impaired or in any way affected by the Plan confirmed by this Order. Any conflict with this provision contained in Debtor's Plan shall be controlled by this Order.

IT IS FURTHER ORDERED THAT:

Any and all claims against and any and all assets of Consort Construction (97-01409-PHX-RTB) shall in no way be altered, impaired, administered or in any way affected by the Plan confirmed by this Order except as specifically ordered

by this Court.

IT IS FURTHER ORDERED THAT:

After confirmation and until this case is officially closed, dismissed or converted, the Debtor shall compoly with the requirements of 28 U.S.C. 1930(a)(6) by payment of quarterly fees to the United States Trustee, and shall file with the Court and supply to the United States Trustee the required monthly reports.

DATED: June 1, 1998.

(Signed)
HONORABLE REDFIELD T. BLUM
United States Bankruptcy Judge

Balbir Singh Tuli
4141 N. Scottsdale Rd.
Suite 110
Scottsdale, AZ 85251
(480) 990-0282

Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re	)
	) Case No. 91-10615-PHX-RTB
BALBIR SINGH TULI,	)
d/b/a Jewel of the Crown	) CHAPTER 11
Builders, a licensed and	) REORGANIZATION
bonded General Contractor	) PROCEEDINGS
(California license number	)
565968; Bond Number	)
669581; Employer I.D.	)
#458-65-2862,	)
	)
Debtor.	)

DEBTOR'S THIRD, ALTERNATIVE, MODIFICATION OF HIS FIRST AMENDED PLAN OR REORGANIZATION DATED 2/10/97. CONSOLIDATED 5/15/97. SUBMITTED 7/7/97 AFTER INCORPORATING SETTLEMENTS SINCE MADE/EFFECTED AND CORRECTED RE-CONSOLIDATED 7/8/97

WITHOUT MATERIALLY AND ADVERSELY AFFECTING ANY CLASS ALREADY VOTED

7.0.5. The major means of debtor's rehabilitation under the Plan, pursuant to 11 U.S.C. §§ 1123(1)(5), 1123(b)(3) & (6), are transfer/sale/retention of property of estate, including, but not limited to, claims, in accordance with the abovesaid Settlements incorporated herein, and adopted hereby. All claims of debtor and of the estate shall be retained and enforced by the debtor as the property of the estate. For the benefit of Consort's creditors through Consort's reorganization through Tuli's rehabilitation, Tuli shall prosecute BAP Appeals Nos. AZ-97-1124 and AZ-97-1421, and in the event BAP or Court of Appeals or U.S. Supreme Court permits, Tuli shall enforce his estate's claim of turnover under 11 U.S.C. § 542, as well as its claim of damages for willful violation of automatic stay under 11 U.S.C. § 362(h), by GEC Alstom.

ARTICLE XIV
DISCHARGE OF DEBTOR

14.01 Upon confirmation of the Plan and vesting of

all assets to the debtor, the debtor shall be discharged of all claims and liabilities arising prior to filing of the petition for relief, pursuant to 11 U.S.C. § 1141, except as otherwise provided by the order of confirmation. Confirmation of the Plan shall vest all property of the estate in the debtor, free and clear of all liens, encumbrances, and claims, except as otherwise provided in the Plan or the order confirming the Plan. Confirmation of the plan shall incorporate and adopt the settlements by the debtor with the creditors, referred to in the Plan. All the rights, claims and remedies of the estate shall be preserved by the Plan for enforcement by the debtor postconfirmation, for the benefit of creditors of Consort in case No. 97-01409-PHX-RTB through the reorganization of Consort through the rehabilitation of Tuli in this case No. 91-10615-PHX-RTB.

DATED this 7th day of July, 1997.

(Signed)

Balbir Singh Tuli

Balbir Singh Tuli
4705 N. 84th Place
Scottsdale, AZ 85251
(480) 990-0282
Attorney or Assisant or Representative for Debtor

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re -	)
	) Case No. 91-10615-PHX-RTB
BALBIR SINGH TULI,	)
d/b/a Jewel of the Crown	) CHAPTER 11 (Involuntary)
Builders, a California	)
General Contractor	) LIST OF CREDITORS
458-65-2862	) HOLDING 20 LARGEST
Debtor.	) UNSECURED CLAIMS

Sprecher & Schuh Holding, A.G. Buchserstrassse7, CH-5001 Aarau, Switzerland (Present name adopted on Jan. 1, 1986; Established in 1900 as Sprecher & Schuh, A.G.	Sprecher & Schuh, Inc. (U.S. Subsidiary of Sprecher & Schuh holding A.G. John Hamm. Pr. CEO 15503 W. Hardy Rd. Houston, TX 77060 (713) 931-7000 Fax (713) 931-9018 (Officer familiar with the claim: Josef. B. Kessler./ Christian Carl/ Ernst-Aug. Dittrich/ Jurg Hepfer)	Damages Claimed For alleged breach of Contracts by the Debtor's Assignor company Consort Construc-tions (P) Ltd of which Debtor is the Assignee

Property of any kind not otherwise scheduled:

1. Payment due for work done in Iraq for: Sprecher & Schuh, CH-5001, Aarau/ Switzerland $7,298,301

2. Damages claims for breach of contract by Sprecher & Schuh, CH-5001, Aarau/Switzerland $25,423,196

BANKRUPTCY CODE
(Relevant portions of certain sections)

§ 101. Definitions

In this title

(4) "claim" means —

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or

(B) right to an equitable remedy for breach of performance, if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

(9) "creditor" means —

(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;

(B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h), or 502(i) of this title; or

(C) entity that has a community claim;

(11) "debt" means liability on a claim;

(33) "Lien" means charge against or interest in property to secure payment of a debt of performance of an obligation;

(50) "transfer" means every mode, direct or indirect, absolute or conditions, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor's equity of redemption;

§ 102. Rules of construction. In this title —

(2) "claim against the debtor" includes claim against property of the debtor.

§ 103. Applicability of chapters.

(a) Except as provided in section 1161 of this title, chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, 12, or 13 of this title.

(g) Except as provided in section 901 of this title, subchapters I, II, and III of chapter 11 of this title apply only in a case under such chapter.

(i) Chapter 13 of this title applies only in a case under such chapter.

§ 362. Automatic stay.

(a)...a petition filed under section 301, 302, or 303 of

this title,...operates as a stay, applicable to all entities, of —

(1) the commencement or continuation,...of a judicial, administrative, or other action or proceeding against the debtor,...or to recover a claim against the debtor that arose before the commencement of the case under this title;

(3) any act to exercise control over property of the estate;

(6) any act...to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title.

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor;

(c) Except as provided in subsections (d), (e), and (f) of this section —

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of —

(C) if the case is...a case under chapter 9, 11,...or

13 of this title, the time a discharge is granted or denied.

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if —

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section —

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

§ 363. Use, sale, or lease of property.

(b) (1) The trustee, after notice and a hearing, may use, sell,...other than in the ordinary course of business, property of the estate.

(c) (1) If the business of the debtor is authorized to be operated under section...1108,...or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale...of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(d) The trustee may use, sell,...property under subsection (b) or (c) of this section only to the extent not inconsistent with any relief granted under section 362(c), 362(d),...of this title.

(e) Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold,...by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale...as is necessry to provide adequate protection of such interest.

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

(4) such interest is in bona fide dispute;

(k) At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.

(o) In any hearing under this section —

(1) the trustee has the burden of proof on the issue of adequate protection; and

(2) the entity asserting an interest in property has the burden of proof on the issue of the validity, priority, or extent of such interest.

§ 501. Filing of proofs of claims or interests.

(c) If a creditor does not timely file a proof of such creditor's claim, the debtor or the trustee may file a proof of such claim.

§ 502. Allowance of claims or interests.

(a) A claim,...proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case..., objects.

(b) ...if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that —

(1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law...

§ 506. Determination of secured status.

(a) An allowed claim of a creditor...that is subject to setoff under section 553 of this title, is a secured claim...to the extent of the amount subject to setoff,...and is an unsecured claim to the extent that...the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless —

(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under secion 501 of this title.

§ 524. Effect of discharge.

(a) A discharge in a case under this title —

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor,

§ 541. Property of the estate.

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held;

(1) ...all legal or equitable interests of the debtor in property as of the commencement of the case.

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate,...

(7) Any interest in property that the estate acquires after the commencement of the case.

§ 542. Turnover of property to the estate.

(a) ...an entity...in possession,...or control, during the case, of property that the trustee may use, sell,...under section 363 of this title,...shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

(b)...an entity that owes a debt that is property of the estate and that is matured,...shall pay such debt to, or on the order of, the trustee, except to the extent that such debt may be offset under section 553 of this title against a claim against the debtor.

§ 554. Abandonment of property of the estate.

(a)...the trustee may abandon any property of the estate that is of inconsequential value and benefit to the estate.

(b)...the court may order the trustee to abandon any property of the estate...that is of inconsequential value and benefit to the estate.

(c) Unless the court orders otherwise, any property scheduled under section 521(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.

(d) Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

§ 1129. Confirmation of plan.

(a) The court shall confirm a plan only if all of the following requirements are met:

(1) The plan complies with the applicable provisions of this title.

(8) With respect to each class of claims or interests—

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

(b)(1)...if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable,....

(2)...the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides—

(i)(I) that the holders of such claims retain the liens securing such claims, whether the property subject such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale,...or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

(B) With respect to a class of unsecured claims—

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property.

§ 1325. Confirmation of plan.

(a)...the court shall confirm a plan if—

(1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title:

§ 1327. Effect of confirmation.

(c)...the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.